

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Germain Difo	Team: Team # 1	CCRB Case #: 200502235	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/01/2005 10:34 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 9/1/2006	Precinct: 44
Date/Time CV Reported Wed, 03/02/2005 10:04 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/02/2005 10:04 AM

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Jeannette Rivera	03561	933259	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kimm Cruse	11030	929966	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POF Jeannette Rivera	Force: PO Jeannette Rivera used physical force against § 87(2)(b)	§ 87(2)(b)

Synopsis

This complaint was made at the CCRB by phone on March 2, 2005. On March 1, 2005 at approximately 10:34 AM, PO Jeannette Rivera and PO Kimm Cruse responded to § 87(2)(b) in the Bronx. § 87(2)(b) had called in a criminal mischief complaint on behalf of her boyfriend, § 87(2)(b) whose car had been broken into the night before. After § 87(2)(b) explained to the officers what had happened, they refused to exit their vehicle to look at the damage done to his vehicle. Picking up a tire iron and storage box that he had left beside his car, § 87(2)(b) stated that he was going to leave if the officers were not going to help him. PO Rivera then exited the vehicle with PO Cruse getting out shortly after her. PO Rivera engaged § 87(2)(b) telling him to speak with the officers with more respect. § 87(2)(b) told the officers that they could leave the scene and began to walk away from PO Rivera and toward PO Cruse, who was standing a short distance away. After instructing § 87(2)(b) to come back, PO Rivera approached him from behind, grabbed his arm, and spun him around. (Allegation A) PO Rivera then snatched the tire iron from § 87(2)(b) and proceeded to arrest him § 87(2)(a) 160.50

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on April 22, 2005. (Encl. 6A-6C) § 87(2)(b) is a § 87(2)(b) year-old black male, who at the time of this interview § 87(2)(b). § 87(2)(g)

At approximately 9:00 AM on March 1, 2005, § 87(2)(b) left his girlfriend's residence at § 87(2)(b) in the Bronx to check on his car, which he had parked across the street the night before. When he went down to his car and opened the front passenger-side door, he noticed that the front driver-side window was broken, indicating to him that the vehicle had been broken into. Though he made no mention of it during his CCRB interview, in his initial complaint narrative § 87(2)(b) stated that his \$35,000 watch had been taken from his vehicle during the break-in. § 87(2)(b) gave his car keys to § 87(2)(b) and told her to call the police to file a complaint. § 87(2)(b) left the scene to go to his residence a short distance away. After an hour had passed, § 87(2)(b) called § 87(2)(b) to inquire as to the status of the complaint he had asked her to file. § 87(2)(b) told him that the police had still not arrived. § 87(2)(b) returned to the scene of the break-in and began to remove his valuables from inside the vehicle, placing them in a storage box. At this point § 87(2)(b) saw a marked patrol car coming down the street and got the attention of the officers inside. When he alerted them to the fact that his car had been broken into, the officers said that because they were not the responding officers, they could not help him. They advised him to wait for the officers responding to his call.

At approximately 10:20 AM, another patrol car pulled up parallel to § 87(2)(b)'s vehicle. PO Jeanette Rivera was in the passenger seat and PO Kimm Cruse was operating the vehicle. PO Cruse asked § 87(2)(b) whether he was the individual who had called the police. § 87(2)(b) told the officers that he had called the police because his car was broken into. As there was a heavily tinted window obstructing the officers' view of the broken window, § 87(2)(b) asked the officers to exit their vehicle so that they could see the damage done to his car. The officers instructed § 87(2)(b) to come over to their vehicle to explain what had happened. § 87(2)(b) repeated his suggestion that the officers exit their vehicle. This discussion continued back and forth, § 87(2)(b) trying to get the officers out of their car and the officers trying to get § 87(2)(b) to come to their vehicle.

After about five minutes of this exchange, § 87(2)(b) told the officers that if they weren't going to help him, they could continue on their way. PO Cruse began to drive away, but PO Rivera told Officer Cruse to stop the car so that she could talk to § 87(2)(b) and "handle his attitude." PO Rivera stepped out of the car and advised § 87(2)(b) that he should speak to officers with more respect. § 87(2)(b) responded

by saying that he had called the officers and the officers were not doing their job, so they could just continue on their way. Hearing § 87(2)(b) talking loudly and angrily to PO Rivera, PO Cruse then stepped out of the vehicle and told § 87(2)(b) that he understood that he was upset about the break-in, but that he should calm down. At this point § 87(2)(b) went back to his car and picked up a tire iron and the storage box into which he had put the items removed from his car. He then began to walk away toward § 87(2)(b)'s house with the tire iron in his left hand and the storage box in his right.

PO Rivera followed § 87(2)(b) telling him to stop a total of about three times. She did not mention anything concerning the tire iron or the storage box. § 87(2)(b) responded, saying that if the officers were not going to help him that he was going to go home. PO Cruse was between § 87(2)(b) and § 87(2)(b)'s residence, and PO Rivera was between § 87(2)(b) and his vehicle. As § 87(2)(b) walked away PO Rivera said to PO Cruse, "Stop the guy, and if he doesn't stop, arrest him." PO Cruse responded, saying, "Arrest him? Arrest him for what? He didn't do anything." PO Rivera then said, "If you're not going to arrest him, I'm going to arrest him." She then grabbed the middle of § 87(2)(b)'s right forearm, the arm with which he was carrying the storage box, and spun him around clockwise to face her. The weight of the storage box created enough momentum to spin § 87(2)(b) around very quickly, causing the tire iron in his left hand to swing toward PO Rivera. At the end of the turn the tire iron ended up directly in front of PO Rivera, about 3 inches from her chest. At this point during the encounter PO Cruse was talking to a bystander between § 87(2)(b)'s house and § 87(2)(b) and PO Rivera, not watching the altercation. PO Rivera grabbed the tire iron out of § 87(2)(b)'s hand. § 87(2)(b) said that she could take the tire iron, but he was still going to his house. When he picked up the storage box and began again to walk away, PO Rivera told § 87(2)(b) to stop or she would arrest him. She again said to PO Cruse, "If you don't arrest him I will arrest him." § 87(2)(b) walked past PO Cruse. At this point a number of people from the neighborhood had heard the commotion and come out of their houses. § 87(2)(b) stated to PO Rivera that she was going out of her way to make the situation difficult, and that he could take down her badge number and they could take this further. She said that he could take her badge number, but that nothing would happen to her. As § 87(2)(b) began to write PO Rivera's badge number in his phone, she said, "I'm going to arrest him," and pulled out her handcuffs. § 87(2)(b) put his hands behind his back and allowed her to take him into custody. PO Rivera effected the arrest without PO Cruse's assistance. He was arrested § 87(2)(a) 160.50 § 87(2)(b) did not sustain any injuries during this encounter.

Results of Investigation

§ 87(2)(g)

PO Jeanette Rivera

§ 87(2)(a) 160.50

Police Officer Jeannette Rivera of the 44th Precinct was interviewed on June 8, 2005. (Encl. 9A-9B) On March 1, 2005, PO Rivera was working a 7:05 AM by 3:40 PM tour. She was working with PO Kimm Cruse. They were both in uniform and were performing patrol within the confines of the 44th Precinct. They were assigned to marked patrol car #5642. At the conclusion of her interview, PO Rivera provided her memobook entries pertaining to this incident.

On March 1, 2005 at approximately 10:34 AM, PO Rivera and PO Cruse responded to a report of criminal mischief at § 87(2)(b) in the Bronx, where a car had been broken into. When they arrived on the scene, the complainant, later identified as § 87(2)(b) appeared very upset, cursing loudly as he removed his belongings from his car. When PO Rivera asked him what had happened, § 87(2)(b) told her that his car had been broken into and that his fifty-thousand-dollar watch had been stolen. He began yelling and cursing, saying that this was the second time that this had happened to him and that the police never did their jobs. At this point PO Rivera and PO Cruse exited their vehicle to speak with § 87(2)(b)

§ 87(2)(b) PO Rivera told him that if he was concerned about his watch he should have locked it in a safe and that if he was concerned about his car he should have parked it in a parking lot. She then informed him that because he had not actually seen anyone break into his car, all she could do is take a report. § 87(2)(b) refused, saying that he would not file a report because the police would not do anything about it anyway. PO Rivera then said that if § 87(2)(b) was not going to file a complaint, she would note that they responded and leave the scene. During this exchange § 87(2)(b) was going back and forth between the police vehicle and his own, moving and arranging his belongings in anticipation of bringing them into the apartment a short distance away.

As POs Rivera and Cruse got back into their vehicle and prepared to leave, § 87(2)(b) positioned himself in front of the patrol car. At this point both PO Rivera and PO Cruse exited their vehicle and approached § 87(2)(b) who was now holding a tire iron in his left hand and waving it around as he yelled at the officers. Upon further questioning, PO Rivera stated that PO Cruse actually approached § 87(2)(b) after he had gone back to his car to pick up his belongings and was about to go into an apartment a short distance away. She was positioned behind PO Cruse at a short distance.

As PO Cruse began to speak to § 87(2)(b) who was standing about a foot away, PO Rivera instructed § 87(2)(b) to put the tire iron he was holding on the ground. At this point § 87(2)(b) turned toward her, responding that he was not going to put anything down and that he would “fuck her up” because PO Rivera was a “fucking girl.” The tire iron was within two feet of PO Rivera at her chest level. PO Rivera again instructed § 87(2)(b) to drop the tire iron. After giving this instruction for the third time, PO Rivera grabbed the tire iron, struggling with § 87(2)(b) for a few seconds before wresting it from his grasp. Upon further questioning, PO Rivera added that she had grabbed the tire iron as § 87(2)(b) swung it toward her, and that if she had not grabbed it, it would have hit her. While this was going on, PO Cruse was trying to physically keep § 87(2)(b)'s girlfriend and another bystander from getting involved in the altercation. When PO Cruse saw that PO Rivera had taken the tire iron from § 87(2)(b) he called for backup. Neither she nor PO Cruse made physical contact with § 87(2)(b) at any point.

During her interview, when asked whether PO Cruse was able to see her, PO Rivera began to say that his back was turned during the struggle. Before completing her statement, however, Hugo Ortega, an attorney representing the Patrolman's Benevolent Association, suggested that she could not speak to what PO Cruse could or could not see. Following this interjection, PO Rivera stated that she could not see whether PO Cruse was in a position to witness her struggle with § 87(2)(b). However, when she was asked whether she had felt the need to alert PO Cruse to the fact that she had almost been hit with a tire iron, she stated that she did not have to because he could see what was going on.

After getting the tire iron away from § 87(2)(b) PO Rivera placed it in the passenger side of the patrol vehicle. Though PO Rivera initially stated that PO Cruse was restraining § 87(2)(b) at this point, upon further questioning she said that he placed his hand on § 87(2)(b)'s shoulder to calm him down. While PO Cruse tried to calm § 87(2)(b) PO Rivera told him to turn around and that he was going to be arrested § 87(2)(a) 160.50. § 87(2)(b) began to walk away, toward a fence on the opposite side of the street. PO Rivera approached him, put him against the fence, and handcuffed him. Though PO Cruse did not assist in handcuffing § 87(2)(b) he stood by to ensure that he did not attempt to escape or injure PO Rivera. As PO Rivera escorted § 87(2)(b) into the patrol vehicle, about four other officers arrived on the scene, but no supervisors responded. § 87(2)(b) was arrested § 87(2)(a) 160.50

PO Kimm Cruse

Police Officer Kimm Cruse of the 44th Precinct was interviewed on May 12, 2005. (Encl. 10A-10B) On March 1, 2005, PO Cruse was working an 7:05 AM by 3:40 PM tour. He was working with PO Jeanette Rivera. They were both in uniform, were assigned to marked patrol car, and were performing mobile patrol within the confines of the 44th Precinct. PO Cruse did not have any memobook entries regarding this incident.

On March 1, 2005 POs Cruse and Rivera received a call concerning criminal mischief at § 87(2)(b) in the Bronx. When the officers arrived at the scene, § 87(2)(b) was standing in the street near his

vehicle. When the officers asked § 87(2)(b) what had happened, he told them that another patrol car had been at the scene prior to their arrival and had refused to help him. § 87(2)(b) was acting agitated and irate, yelling and cursing at the officers as they tried to calm him down. PO Rivera attempted to speak with § 87(2)(b) but he continued to speak loudly and profanely, saying, “Fuck you. You can go fuck yourselves you fucking pigs.” PO Cruse then exited the vehicle, stepping to within about arms length of him to try to speak with § 87(2)(b) and calm him down. After a brief exchange, § 87(2)(b) turned to walk towards his girlfriend’s residence, holding a bag, a toolbox and a tire-iron. Officer Rivera, using the loudspeaker in the police vehicle, instructed § 87(2)(b) to drop the tire-iron, repeating her command two times when he did not comply. PO Rivera then exited the vehicle and approached § 87(2)(b). At this point § 87(2)(b) was between POs Cruse and Rivera, facing PO Cruse who was approximately three feet away. PO Rivera “nudged” § 87(2)(b) on his shoulder with her left hand and snatched the tire-iron from § 87(2)(b) with her right hand. The tire-iron was in § 87(2)(b)’s left hand when PO Rivera took it from him, and was down at his left side. The “nudge” that PO Rivera used to distract § 87(2)(b) and take the tire-iron was nothing more than a small push lacking any significant force. The nudge caused the tire-iron to move slightly, but it did not come above § 87(2)(b)’s waist level.

Immediately after PO Rivera took the tire-iron from § 87(2)(b) between thirty and thirty-five people who had previously been watching from a distance, converged on § 87(2)(b) and the officers. PO Cruse, trying to ensure his safety and that of his partner, verbally engaged four or five of the converging spectators and began to call for backup. During this process he became separated from PO Rivera and § 87(2)(b) by about ten to fifteen feet. As a result he could not really see what transpired between PO Rivera and § 87(2)(b). He could not recall whether § 87(2)(b) asked PO Rivera for her badge number or at what point after the backup arrived § 87(2)(b) was arrested. PO Rivera effected the arrest without assistance.

Criminal Conviction History for § 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History for § 87(2)(b)

§ 87(2)(b) does not have any prior complaints on file. (Encl. 4A)

CCRB History for PO Jeannette Rivera

This is PO Rivera’s first complaint after being with the NYPD for one year. (Encl. 3A)

Conclusions and Recommendations

Officer Identification

PO Rivera provided § 87(2)(b) with her name and shield number during this incident. She was also listed as § 87(2)(b)’s arresting officer. During his CCRB interview, § 87(2)(b) identified both PO Rivera and PO Cruse as having been the officers involved in this incident.

Undisputed Facts

It is undisputed that PO Jeannette Rivera and PO Kim Cruse responded to § 87(2)(b) in the Bronx on the date of this incident. It is also undisputed that PO Rivera took the tire iron that § 87(2)(b) was holding out of his hand.

§ 87(2)(b), § 87(2)(g)

Credibility Assessment

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

He did not attempt to hide the fact that he was very agitated during this encounter, nor did he deny that the tire iron had come close to hitting PO Rivera. He also admitted to being instructed to stop as he walked away from PO Rivera. However, § 87(2)(b) stated that he was not instructed to drop the tire iron that he was carrying during this encounter. § 87(2)(b), § 87(2)(g)

PO Jeannette Rivera

§ 87(2)(b), § 87(2)(g)

Though PO Cruse and § 87(2)(b) both stated that PO Rivera made physical contact with § 87(2)(b) before taking the tire iron from him, PO Rivera denied ever having touched him. PO Rivera at first stated that PO Cruse assisted her in restraining § 87(2)(b) but upon further questioning admitted that PO Cruse simply put a hand on his shoulder in order to calm him down. § 87(2)(g)

PO Kimm Cruse

§ 87(2)(g)

He did not attempt to overstate the aggressive nature of § 87(2)(b)'s behavior or suggest that he had tried to assault PO Rivera. He also admitted that PO Rivera made contact with § 87(2)(b) in order to relieve him of the tire iron. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: PO Jeannette Rivera used physical force against § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that as he was walking away from PO Rivera, she grabbed his arm and spun him around, snatching the tire iron after it almost hit her in the face. PO Rivera stated that she instructed § 87(2)(b) several times to drop the tire iron that he was holding. She also stated that she grabbed the tire iron as § 87(2)(b) attempt to assault her with it. Though she admitted to briefly struggling with § 87(2)(b) in order to relieve him of the tire iron, PO Rivera denied making physical contact with him.

§ 87(2)(b) stated that as he began to walk away from PO Rivera and toward PO Cruse, PO Rivera instructed him to come back a total of about three times. He also stated that when he had gotten within a few feet of PO Cruse, PO Rivera grabbed his arm, spun him around, and snatched the tire iron that he was holding out of his hand. § 87(2)(b), § 87(2)(g)

New York State Penal Law 35.30 states, "A police officer may use physical force when and to the extent he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force." (Encl. 2A) § 87(2)(b), § 87(2)(g)

While § 87(2)(b) asserted that PO Rivera grabbed him and spun him around before relieving him of the tire iron, PO Cruse stated that PO Rivera only "nudged" § 87(2)(b) in order to distract him while she took it. Patrol Guide Procedure 203-11 states that in using force against an individual an officer is

authorized to use, “only that amount of force necessary to overcome resistance.” (Encl. 1A) § 87(2)(b), § 87(2)(g)

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: